

**REMARKS**

These Remarks are responsive to the Non-Final Office Action mailed on April 5, 2007 ("Non-Final Rejection"). Claims 39-47, 49-66, and 68-86 are pending in the application, and all claims currently stand rejected. No new matter has been added. Applicants respectfully request reconsideration of the claim rejections for at least the reasons set forth below.

**I. REJECTIONS UNDER 35 U.S.C. § 101**

The Office Action rejects claims 39-47, 49-66, and 68-86 under 35 U.S.C. § 101 as allegedly being directed to non-statutory subject matter. Specifically, with respect to claims 39 and 77, the Office Action asserts that the claimed invention lacks a "tangible" or "real-world" result. However, Applicants respectfully disagree. It is noted that there exists patentable subject matter as long as the claimed invention as a whole accomplishes a practical application. That is, it must produce a "useful, concrete and tangible result." State Street Bank & Trust Co. v. Signature Financial Group Inc., 149 F.3d 1368, 1373, 47 USPQ2d 1596, 1601-02. Furthermore, Applicants direct the Examiner to the case law set forth in In re Beauregard, 35 USPQ 2d 1383, 1384 (Fed. Cir. 1995), In re Lundgren, (B.P.A.I. Case No. 2003-2088 (September 28, 2005)), and others, which clearly provide a patentable subject matter basis for claims 39 and 77.

For example, claim 39 recites "A computerized method for tracking accounts managed by an account agent or agents, the method comprising...assigning a score to the account agent or agents based on the account metric, wherein the assigning operation is performed using the processor and wherein the score is used to evaluate the account agent or agents" (emphasis added). This contradicts the Examiner's assertion that the claims do not recite a "real-world result." Rather, claim 39 clearly recites a tangible embodiment – a method that assigns scores for evaluating and ultimately tracking accounts managed by an account agent – that is neither abstract nor merely encompassed in thoughts, as alleged by the Office Action. The language of claim 77 is similar to claim 39, and thus the reasons discussed above with regards to claim 39 similarly apply to claim 77.

As a result, it is respectfully requested that the aforementioned non-statutory subject matter rejection of claims 39-47, 49-66, and 68-86 be withdrawn.

## II. REJECTIONS UNDER 35 U.S.C. § 103(a)

The Office Action rejects claims 39-47, 49-66, and 68-86 35 U.S.C. § 103(a) as allegedly being unpatentable over Keyes (U.S. Pat. No. 6,456,983) in view of Land (U.S. Pat. No. 6,807,533), and in further view the article entitled "How to Monitor Collectors" from Credit Card Management Volume 13, Issue 4, dated July 2000 (hereinafter "Rial"). However, Applicants respectfully traverse the rejection.

As stated in MPEP § 2143, to establish a *prima facie* case of obviousness, there must be some suggestion or motivation to modify the reference or to combine reference teachings, there must be a reasonable expectation of success, and the prior art references must teach or suggest all the claim limitations. *See* MPEP §2143. The teaching, suggestion, or motivation to combine or modify the teachings of the prior art to produce the claimed invention must be found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. *See, e.g., In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992); and MPEP § 2143.01. The teaching or suggestion to make the claimed combination and the reasonable expectation of success may *not* be drawn from the applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). Further, the mere fact that references *can* be combined or modified does not render the resultant combination obvious unless the prior art also suggests the *desirability* of the combination. *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990). Finally, as stated in MPEP § 2141.02, a prior art reference must be considered in its entirety, *i.e.*, as a whole, including portions that would lead away from the claimed invention. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984).

### A. *Keyes, Land, and Rial fail to teach or suggest all the claimed limitations*

The Applicants respectfully submit that the combination of Keyes, Land and Rial fails to present a *prima facie* case of obviousness because the references fail to teach or disclose:

- “generating an account metric ... including a weighting according to at least a change in level of delinquency of the account, ... and ... assigning a score to the account agent or agents based on the account metric...wherein the score is used to evaluate the account agent or agents,” as recited in claim 39;
- “identify[ing] a change in level of delinquency of the account ... generat[ing] an account metric ... including a weighting according to at least the reduction in the level of delinquency of the account; and ... assign[ing] a score to the account agent or agents based on the account metric...wherein the score is used to evaluate the account agent or agents,” as recited in claim 58; or,
- “calculat[ing] a change in delinquency, as measured by the difference between the first delinquency level and the second delinquency level; and assign[ing] a performance score to the account agent or agents, based at least in part on the change in delinquency...wherein the performance score is used to evaluate the account agent or agents,” as recited in claims 77 and 82.<sup>1</sup>

As such, the combined references do not teach each and every limitation of the claims, and no *prima facie* case of obviousness exists. Furthermore, even if all of the claim limitations are disclosed in the cited references, there is no motivation to combine the cited references, and thus the combination is improper. These traversals are explained in detail below.

*Keyes*

The Office Action cites to Keyes for a number of features. Most notably, the Office Action alleges that Keyes discloses “generating an account metric based on the step of comparing the baseline status to the updated status, the account metric

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<sup>1</sup> The Applicant paraphrases these three limitations and refers to them collectively in this reply. This is done solely for the purposes of convenience and clarity, and is not intended to alter or supplement the meaning of these claim terms.

including a weighting according to at least a change in the level of delinquency of the account." Office Action at p. 3, *citing* Keyes at col. 5, l. 57 - col. 6. l. 36.

Keyes does not address the issue of evaluating account agent performance in any way, let alone using a score based on an account metric weighted according to a change in delinquency levels to do so. Instead, Keyes teaches a regime for determining whether it is more worthwhile to keep a group of accounts and try to collect on them, or sell the accounts to other entities at a discount. *See, Keyes, Abstract; col. 2, ll. 3-9; and col. 7, l. 66 - col. 8, l. 7.* To do this, Keyes generates historical portfolio information that tracks the payment history from previous delinquent accounts, *id., col. 5, ll. 11-22,* and calculates a "score" that reflects "the payment which would be expected to be received on the subject historical delinquent account based upon certain assumptions." *Id., col. 5, ll. 63-65.* One factor that is considered in generating this score is "the lapse of time from the last payment made on the subject delinquent account," and another is "how long the subject delinquent account has been in existence." *Id., col. 6, ll. 1-4.* Keyes also mentions that accounts can be scored, then re-scored when the historical portfolio of the account is "rebuilt" at a later date. *Id., col. 6, ll. 4-13.* Using this scoring regime, Keyes is able to use historical account data ("liquidation profiles") to determine whether it is worthwhile to keep current delinquent accounts. *Id., col. 7, l. 66 - col. 8, l. 7.* Keyes does this by comparing the current delinquent account with historical accounts having the same "score," *id., col. 9, ll. 1-4,* to determine whether the account owner can expect to get a greater return by selling the account to a third party, or keeping it and continuing to try to collect on it. *Id., col. 9, l. 39 - col. 10, l. 19.* As the Advisory Action admits, the "score" in Keyes is based on certain factors such as outstanding balance. *See Advisory Action at p. 2.* However, the "score," as recited in the claimed invention, is distinguishable from the "score" in Keyes because it is based on an account metric weighted according to a change in delinquency levels and used to evaluate the account agent or agents. While Keyes does disclose the analysis of the *static* level of delinquency at a particular time, it does *not* appear use the actual *change* in delinquency for any calculation. In fact, Keyes *never does state* that the change in level

of delinquency (*e.g.*, a change from three months delinquent to one month delinquent, *etc.*) is used as a weighting factor in scoring. For example, even though the Office Action alleges that “Keyes...teaches generating account metrics,” only the Land reference was cited to allegedly teach these limitations. Office Action at p. 8. Furthermore, Keyes does not use the score to “evaluate the account agent or agents,” as explicitly recited in the independent claims. Thus, the Office Action’s extrapolation of this alleged teaching in Keyes is unfounded.

**Land**

The Office Action alleges that:

Land teaches receiving baseline account status as well as updated account status (column 12, line 37-49 and column 14, lines 8-15 and Figures 18-20). Land teaches managing account receivables in which credit officers receive a performance evaluation for collecting on delinquencies which are monitored and become part of the credit officer’s performance evaluation (column 11, lines 45 thru column 12, lines 3). An account metric is generated by a percentage of available account receivables as well as forecasted collection are monitored and reported (column 11, lines 45-60).

Office Action at p. 4. The first citation, to column 12, lines 37-49, merely states how accounts are determined to be delinquent and aged. The citation to column 14, lines 8-15 describes Figure 20, which provides historical account information. The citation to Figures 18-20 discloses three illustrations of screens showing customer account information. Finally, the pair of citations to column 11, lines 45 through column 12, line 3 discuss how to evaluate credit officers. In this portion of the disclosure, Land describes two conventional evaluation techniques: collections as a percent to available receivables (that is, the amount collected compared to the total amount due), and percent of forecasted collections (which are used to measure the credit officer’s ability to set accurate collection targets). Land also describes credit officers being reviewed based on the “delinquency ratio,” which is the ratio of number of past due loans to the total number of loans serviced. *Id.*, col. 11, ll. 65-67.

Despite the foregoing disclosures, Land says nothing about using the measure of the change in delinquency of an account (which the Office Action appears to suggest is calculable from Land's disclosure of historical account data) in conjunction with the separate portion of Land that deals with how credit officers are evaluated. Land merely discloses conventional metrics for evaluating account agents. As such, even assuming, for the sake of argument, that the Land system could be used to calculate the change in delinquency of an account over time, the reference does not provide *any* suggestion that this particular metric would be useful in "assign[ing] a score to the account agent or agents based on the account metric...wherein the score is used to evaluate the account agent or agents," as expressly recited in the independent claims. In fact, Applicants respectfully submit that the Office Action readily admits this: "Keyes and Land fail to teach assigning a score to the account agent based on the account metric."<sup>2</sup> Office Action at p. 4. Indeed, in describing the various conventional metrics for evaluating account agents, Land does not state that these metrics are deficient or that they can be modified or supplemented in any way.

### Rial

The Office Action appears to rely on Rial for the apparent teaching of "agent scoring." Specifically, the Office Action states that "Rial teaches a method for monitoring collectors in which individual collectors are monitored by supervisors and given a score," and these scores "are included in employee performance evaluations." Office Action at p. 4, citing Rial at p. 1 and p. 3. While Rial does discuss "scoring" collection agents, the reference, however, does so in the context of evaluating the agents' aptitude at communicating with customers. Rial provides no insight whatsoever into how to "score" an agent or agents *based on any kind of account metric derived from a delinquency change*.

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<sup>2</sup> The Examiner appears to refer to the "account metric" of the pending claims as the limitation of "weighting according to at least a change in level of delinquency of the account."

Rial describes common regimes for “call monitoring” — that is, “the practice of observing how agents handle calls in order to improve their skills and to enhance customers’ experience with the company.” Rial at 1. In this practice, supervisors listen in on the agents’ calls, and provide feedback on how the agents’ control conversations, apply company policies, comply with federal and state laws. *Id.* at 3. In addition, Rial discloses that call-center supervisors can rate the agents’ abilities to “identify the customer, verify information, and practice effective listening skills” on a scale, *id.*, and that “[c]all-monitoring scores or other collector measurements may also be included in employee performance evaluations.” *Id.* Like Keyes and Land, however, Rial says and suggests absolutely *nothing* about using the change in the level of delinquency of an account as a metric for evaluating the performance of an account agent or agents, as expressly recited in the independent claims.

NONE OF THE CITED REFERENCES DISCLOSE USING A CHANGE IN  
DELINQUENCY TO EVALUATE ACCOUNT AGENT PERFORMANCE

A rejection under 35 U.S.C. §103 is proper only when the references teach each and every limitation of the claimed invention. *See, e.g.,* MPEP §2143. The Office Action does not satisfy this requirement, and therefore reconsideration and allowance are respectfully requested.

As explained above, none of the cited references disclose or suggest any situation in which an account agent (or agents) is assigned a score based on a metric derived from the change in delinquency of an account for the evaluation of the account agent (or agents), as required by all of the independent claims. Keyes, at best, simply discloses using statistical data such as how long an account has been delinquent to determine whether an account — not an account *agent* — is worth keeping or selling, and says nothing about evaluating account agents. Land, at best, describes conventional account agent performance evaluation regimes, and also discloses (in contextually separate portions of the disclosure) that historical account delinquency information may be collected or observed. Land does not tie these two portions of the disclosure in any way that would lead a person of ordinary skill in the art to conclude that Land suggests that

a change in delinquency can be used to measure or “score” account agent performance. Finally, Rial discusses scoring account agents based on observing how they perform on the telephone with customers, and says nothing about using account metrics — much less a change in delinquency — to evaluate account agent performance.

Thus, in response to the Office Action’s assertion that “one cannot show nonobviousness by attacking the references individually where the rejections are based on combinations of references,” Applicants respectfully submit that the detailed discussion provided above for each of the applied prior art references is not to show nonobviousness. Rather, the attack on each of the reference is to show that not all of the claimed limitations are taught in the references, alone or in combination.

Even assuming, for the sake of argument, that the references teach all the limitations, when taken together, however, they fail to disclose or suggest the feature of assigning a score to an *account agent or agents* based on a metric derived from the change in delinquency of an account *for the evaluation of the account agent or agents*. As a result, Applicants respectfully submit that none of the reference, singly or in combination, disclose all of the claim limitations and therefore the requirements for a *prima facie* case of obviousness are not satisfied.

#### *B. Lack of Motivation to Combine the References*

None of the cited references disclose any kind of account agent evaluation or scoring regime in which the account agents are evaluated based upon the change in the delinquency level of an account. The fact that none of the references states this allegedly obvious feature is compelling evidence of non-obviousness. Furthermore, the Office Action cannot simply combine the references to obtain the claimed invention. Rather, the Office Action must combine the references and simultaneously *modify* them by taking scores associated with *accounts* and applying them to account *agents* to obtain the claimed features. However, the Office Action fails to set forth any substantiated or logical motivation in the prior art to simultaneously combine and modify the references in this manner.

The Office Action alleges that “it would have been obvious...to modify the teachings of Keyes to include the collection teachings of Land along with performance evaluations for the collection agents because it provides an incentive to the collection agent.” Office Action at p. 4. In making this combination, however, the Office Action actually modifies the references by converting Keyes’ teachings regarding *account* evaluation by applying the *account* scores to Land’s account *credit officer and collection agent* evaluation. Office Action at p. 4. The final step in the Office Action’s combination of references is to add Rial. In support, the Office Action states that “it would have been obvious to modify Keyes and Land to include the scoring teachings of Rial because it provides a more comprehensive method for measuring the credit officer’s ability to apply company policy.” Office Action at p. 4. However, Rial does not disclose any type of scoring system that associates the change in delinquency of an account with account agent performance, and so this reference appears to be added solely to tie the term “score” with account agent evaluations. The addition of Rial does not correct the improper combination and modification of Keyes and Land, as explained below, and requires no further elaboration at this point.

This combination and modification of Keyes and Land ignores the distinct differences between the process and purpose of evaluating *accounts* and evaluating account *agents*, and, not surprisingly, suffers from several deficiencies. First, as covered in the prior section, Keyes does not disclose the use of a change in delinquency to score the accounts. Second, the Office Action appears to follow the logic that any and all factors that are useful for scoring an account are also useful for scoring an account agent or agents. This is not true, and there is no basis in the prior art for suggesting that such a modification would be successful.

***The Combination Renders Land Unsatisfactory for its Intended Purpose***

Keyes’ scores accounts based upon how likely it is that the bank will actually recover the delinquent funds due to those accounts. The Keyes “score” is “reflective of the payment which would be expected to be received on the subject historical

delinquent account based upon certain assumptions.” Keyes at col. 5, ll. 62-65. If the score is high enough, the bank will keep the account because it is likely to recover the funds due, but if the score is too low, the bank will sell the account to a third party. *See*, Keyes at col. 3, ll. 55-67. According to the Office Action’s logic for modifying Keyes with Land, these same scores can also be applied directly to evaluating account agents tasked with recovering the funds due on the delinquent accounts. Office Action at p. 4. But if the Office Action’s logic is followed, then it achieves an absurd result. Namely, account agents will receive higher “scores” for collecting on accounts that are *more likely to be paid in the first place*. That is, account agents would be given higher scores doing an *easier* task — not for excelling at their jobs. Not only would this be useless in its own right because it would not reflect the skill of the account agent or agents, but it also would be counterproductive to the conventional account agent evaluation regimes set forth in Land. Thus, this combination would render Land unsatisfactory for the purpose of evaluating account agent performance.

**There is No Reasonable Expectation of Success**

In view of the foregoing analysis, it will also be seen that the alleged modification to apply the scores of Keyes to account agent evaluation of Land also contradicts the very alleged motivations that the Office Action relies upon to make the combination. First, there is no basis in the prior art for the statement that the combination would achieve the alleged result of “providing incentive,” “applying company policy,” or “increased efficiency” by the agent. Not only is this allegation unfounded in any of the cited references, it also does not make logical sense. How is giving an account agent a higher score for collecting on an “easy” account (one that is already likely to be collected) associated in any way with the agent’s efficiency? Similar, how does this provide incentive or application to company policy? The “score” in Keyes has nothing to do with agent performance, but is instead based on various statistics relating to the account. Even assuming, for the sake of argument, that it does, if there is any association, then giving agents high scores for performing easier tasks would be just as likely to instill laziness as it would be to motivate them to perform

more efficiently. As such, there is no reasonable expectation that the combination and modification of the references would obtain the claimed result of increasing incentive and account agent efficiency.

It is also incorrect that the combination would provide "a more comprehensive method," as purported by the Office Action. Nothing in the combination suggests that a more comprehensive approach will result. This is merely unsubstantiated conjecture on the part of the Examiner. As a result, there is no reasonable expectation that the combination and modification of the references would obtain a more comprehensive method.

**The Combination is Based on Impermissible Hindsight**

In view of these problems with the combination of Keyes and Land, it appears that the combination of references is not based upon any motivation in the references or in the prior art, but is instead based upon the teachings of the present disclosure. First, the combined references do not teach all of the claim limitations unless one were to somehow extrapolate from Keyes disclosure that it actually uses the change in delinquency of an account as a statistical factor in analyzing accounts. This conclusion appears to be mere speculation, and finds no clear support in any of the Keyes, Land, or Rial references.

Second, the combination and modification of Keyes and Land in which the *account* "scores" of Keyes are used to evaluate *account agent* performance is clearly an "apples-to-oranges" comparison, and, as such, suffers from several flaws because it renders the prior art subjected to the proposed combination unsuitable for its intended purpose, and has finds no logical motivation in the prior art. In view of these deficiencies, it appears that the only possible source for a motivation to combine and modify the references lies in the present disclosure.

While the Office Action asserts that "any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning," Applicants maintain that the issue is not merely hindsight conjecture, but the Office's use of impermissible

hindsight. In this case, the Office merely assumes and fails to provide any evidence as to why one or ordinary skill in the art would choose to implement the portfolio information of Keyes, the conventional metrics of Land, and the scoring regime of Rial with each other., and if so, how that would work. Rather, the Office relies on his own hindsight conjecture, which is clearly improper.

In summary, the alleged combination and modification of Keyes and Land is improper for at least three reasons. To begin with, as explained above, the combination is improper because it would render the portion of Land relating to evaluating account agents (which is the portion relied upon for the rejection) unsuitable for its intended purpose because it would reward account agents for collecting on delinquent accounts that are more likely to be collected upon in the first place. *See MPEP §2143.01(V).* Second, the combination is improper because there is no motivation in the prior art to combine and modify the references as proposed, because doing so would not obtain the benefits that allegedly provide the motivation in the first place — this suggests not only that there is no reasonable expectation that the proposed combination would be successful, but also that the alleged motivation did not exist in the first place. *See MPEP §2143.02 and 2143.01(I).* Finally, the combination is improper because the prior art fails to provide any express motivation to combine the references, and the alleged inherent motivation to combine the references proves to be illogical and without any merit or support, thus the proposed combination must necessarily arise as a result of impermissible hindsight based upon gleaning the disclosure of the present invention. *See MPEP §2145(X)(A).*

### *C. Evidence of Non-Obviousness*

Applicant also provided, in its August 4, 2005 Request for Reconsideration, a Declaration under 37 C.F.R. § 1.132 of Dr. William F. Mann III (the “Mann Declaration”) as additional evidence of non-obviousness of the claimed subject matter. The Mann Declaration was repeated in Applicants’ January 6, 2006 Request for Reconsideration and mentioned again in Applicants’ June 15, 2006 Request for Reconsideration. Although the Mann Declaration was previously submitted, it is fully applicable to the

present rejection of the claims. Therefore, it is incorporated herein by reference. The Mann Declaration sets forth compelling evidence of non-obviousness, and fully satisfies the requirements forth in MPEP §§ 716.03.

Neither of the last three Office Actions have addressed, or even mentioned, the Mann Declaration, even after repetitious reminders to the Examiner and the PTO. As a result, Applicants can only conclude that it appears to not have been properly considered. As set forth in the Manual of Patent Examining Procedure, the failure to consider this evidence is improper: “[a] determination under 35 U.S.C. § 103 should rest on all the evidence and should not be influenced by any earlier conclusion.” MPEP § 2144.08(III).

Applicants respectfully submit that the Mann Declaration clearly rebuts and invalidates the combination of the references applied against the present invention and should be considered and entered. Furthermore, this factual evidence *once again* stands wholly unrebutted by the Patent Office. For this additional reason, the Applicants request reconsideration and allowance of the pending claims.

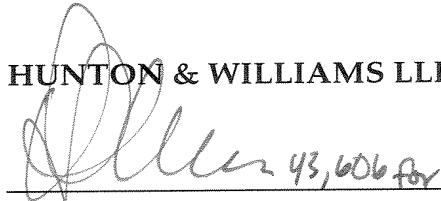
**CONCLUSION**

The Applicants respectfully submit that the application is in condition for allowance, and therefore requests reconsideration and notice of allowance. If the Examiner believes that prosecution might be advanced by discussing the application with Applicants' counsel, in person or over the telephone, Applicants' counsel would welcome the opportunity to do so.

No fees are believed to be due in connection with this Response. However, if it is determined otherwise, please charge any fee and/or variance to the undersigned's Deposit Account No. 50-0206.

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Dated: June 5, 2007

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